Election to the College Advisory Committee.

Mr. President.—It is proposed to elect one of the members of this House to the Maharaja's College Advisory Committee and the election will be held on Thursday at 5 p. m. Nomination papers for the same should reach the Legislative Council Secretary before 5 p. m. on Wednesday the 1st December 1937.

The Cochin Tenancy Bill.

Mr. President.—The House will now resume consideration of the Cochin Tenancy Bill.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—"*Delete the renumbered section 54 of the Bill.*"

Sir, section 54 of our Bill is the same as section 52 of the Bill as passed by this Council. That section lays down a certain procedure to be adopted in determining the ratio of the respective interests of the landlord and the tenant. Now it is obvious that it is impossible practically to give an exhaustive method. The Government consider that the method that has been prescribed in this section is not quite adequate enough. Government are also aware that no practical difficulty is likely to arise in view of the consistent and longstanding practice followed by the Chief Court and the other courts in the land with regard to the determination of the ratio in which value of improvements should be given to the tenant and the jenmy. Well-known decisions as reported in 12 Cochin 237 and 27 Cochin 433 and others have fixed a certain proportion and have fixed a *modus operandi* to be adopted and followed in cases like this. Government think it will be much better and safer to leave things as they are rather than incorporate it in the Act. It is a provision which if passed should not be considered to be unsatisfactory. Hence the provision contained in section 52 may be deleted.

Mr. K. P. Kannan Nayar *(Secretary to Government).*—I second the amendment.

Mr. A. V. Moothedan *(Chalakudi).*—Sir, I oppose this motion. In the Chief Court decisions to which the Hon'ble Member for Law referred the very same principle is incorporated. What is aimed by this amendment is that the principle enunciated in the Reports is put on the Statute. Whenever there is an irredeemable kanom, the proportion between the landlord and the tenant after settling the value of improvements and the kanom amount, is ½ and ½. What I say is that the principle

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incorporated in the Chief Court decision may be very well copied here. No new principle is involved. It is a statutory recognition of the interests of the landlord and tenant. Government lose nothing by the incorporation of this section.

Mr. A. Sankara Menon *(Trippunittura)*.— I do not think that section 52 is exactly in consonance with the decision of the Chief Court. The Hon'ble Member may be pleased to note the various provisions contained in section 52 as it now stands. "First find the value of the land with the improvements thereon. Secondly find the kanom amount and puramkadam, if any, and the value of the tenant's share of the improvements. Thirdly find the value of the landlord's improvements, if any." Now in the 3rd portion the value of the landlord's share of the improvements made by the tenants is not provided for. And then the next—fourthly, "if there be a balance, capitalise". The result is that if the first three portions cover the whole amount awarded the jenmy or landlord does not get anything under this provision with regard to the michavarom that he is getting, or the renewal fees that he may be entitled to get. That is I think the first thing that should be provided in apportioning the amount, 4th clause says that if there be a balance after deducting the aggregate, capitalise. That shows that there may be cases in which will be left nothing after all. Very often it happens that the value of the improvements is much more than the value of the land. It may appear paradoxical. In certain country parts, the value of the land and buildings will not be the same. If you value the land separately and add the cost incurred in putting up the building, in many cases the value of improvements may be such that there may not be anything left to the jenmy. If the amount mentioned in the 1st 3 portions are deducted the result is that with regard to the jenmy's share of the tenant's improvements, if this rule is applied, the landlord will get only half of what he is now getting under the decision of the Chief Court. Now, the decision of the Chief Court is to the effect that land value is taken separately and also the value of improvements. Out of the value of the tenant's improvements three-fourths is given to the tenant and one-fourth to the jenmy. Then with regard to the land value, 50 per cent is given to the jenmy and 50 per cent to the tenant. That is the best way of dealing with the matter. This was pointed out when the amendment was moved last time and I stoutly opposed that and the other members thought that that is a provision that ought to be made. The result of allowing this to stand is to deny anything to the jenmies and in certain cases the value of the tenants' improvements which they are entitled to get. I therefore strongly support this amendment.

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Mr. A. V. Moothedan *(Chalakkudi)*.—On a point of explanation, Sir, it is stated "tenant's share of his improvements". That means that the landlord has got a share in the improvements.

Mr. A. Sankara Menon *(Trippunittura)*.— "Landlord's share of the tenant's improvements" is not mentioned.

Mr. A. V. Moothedan *(Chalakkudi)*.—"Tenant's share of his improvements" is there. The balance goes to the landlord. The landlord has no claim for any share in improvements such as buildings. It is only in improvements—arazhchas such as cocoanut trees, etc.— that the landlord has got any claim.

Mr. P. Kumaran Ezhuthassan *(Wadakkanchery)*.—Mr. President, Sir, I have great pleasure to support the amendment brought forward by the Government and in doing so, I am fortified by the decisions of the Chief Court which have laid down salutary rule for apportioning the share that ought to go to the tenant and also to the jenmy. As stated in the message remitting the Bill to this Council, the provision in section 52 which becomes section 54 now, is most arbitrary. And as stated by the Government Advocate it is also not possible to lay down exhaustive provisions how the apportionment has to be made. Therefore, it is but proper that the method of most equitably working out the equities between the jenmy and the tenant in each case is left in the hands of our Judges. Our experience hitherto has been that if at all they err they are on the side of the tenants. If it is the interest of the tenant that we have in view, certainly on this matter we can rely upon our Judges and leave the matter entirely in their hands and not give them directions by way of Statute which after all cannot be exhaustive. In this view of the matter I have great pleasure to support the amendment.

Amendment was put and carried.

Mr. Thomas Manjuran *(Government Advocate and Law Officer)*.—Then there remain just a few amendments, most of them being necessitated by the passing of the new Civil Procedure Code.

The first amendment is to section 5 (4).—

"*Delete the words and figures 'of clause (c) of section 241 of the Code of Civil Procedure, Act I of 1079' occurring in section 5 (4) of the Bill and substitute for them the following:—*

'of sub-section (1) of section 41 of the Cochin Code of Civil Procedure, Act XXIX of 1111'."

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Mr. K. P. Kannan Nayar (*Secretary to Government*).—I second it.

Amendment was put and carried.

Mr. Thomas Manjuran (*Government Advocate and Law Officer*).—"*Delete the word 'himself' and the full stop occurring after the re-numbered section 32 and substitute for it the following*:—

'*or the tenant respectively*'."

It is only a verbal amendment to make the language more clear.

Mr. K. P. Kannan Nayar (*Secretary to Government*).—I second it.

Amendment was put and carried.

Mr. Thomas Manjuran (*Government Advocate and Law Officer*).—"*Delete paragraph 2 of the re-numbered section 45 and substitute for it the following*:—

'*In such suits, the Court shall, except as hereinafter provided, follow the procedure prescribed in the Cochin Code of Civil Procedure for the trial of small cause suits*'."

One sentence in the Bill as passed by the Council has been omitted, because it is redundant with the passing of the new Civil Procedure Code.

Mr. K. P. Kannan Nayar (*Secretary to Government*).—I second it.

Amendment was put and carried.

Mr. Thomas Manjuran (*Government Advocate and Law Officer*).—"*In the re-numbered section 46 omit the words 'notwithstanding ..... pending'*."

That has become unnecessary with the passing of the new Civil Procedure Code.

Mr. K. P. Kannan Nayar (*Secretary to Government*).—I second it.

Amendment was put and carried.

The Cochin Municipal Bill.

Mr. President.—The House will now resume consideration of amendments to the Cochin Municipal Bill from section 13.

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